

**ASSEMBLY BILL**

**No. 1178**

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**Introduced by Assembly Member Achadjian**

February 27, 2015

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An act to amend Section 11713.3 of the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

AB 1178, as introduced, Achadjian. Vehicles: manufacturers and distributors.

Existing law generally requires a manufacturer, distributor, transporter, or dealer of vehicles to be licensed by the Department of Motor Vehicles. Under existing law, it is unlawful for a manufacturer, manufacturer branch, distributor, or distributor branch to engage in specified practices, including unfairly discriminating in favor of a dealership owned or controlled by a manufacturer or distributor, as specified.

This bill would make technical, nonsubstantive changes to that provision.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 11713.3 of the Vehicle Code is amended
- 2 to read:
- 3 11713.3. It is unlawful and a violation of this code for a
- 4 manufacturer, manufacturer branch, distributor, or distributor

1 branch licensed pursuant to this code to do, directly or indirectly  
2 through an affiliate, any of the following:

3 (a) To refuse or fail to deliver in reasonable quantities and within  
4 a reasonable time after receipt of an order from a dealer having a  
5 franchise for the retail sale of a new vehicle sold or distributed by  
6 the manufacturer or distributor, a new vehicle or parts or  
7 accessories to new vehicles as are covered by the franchise, if the  
8 vehicle, parts, or accessories are publicly advertised as being  
9 available for delivery or actually being delivered. This subdivision  
10 is not violated, however, if the failure is caused by acts or causes  
11 beyond the control of the manufacturer, manufacturer branch,  
12 distributor, or distributor branch.

13 (b) To prevent or require, or attempt to prevent or require, by  
14 contract or otherwise, a change in the capital structure of a  
15 dealership or the means by or through which the dealer finances  
16 the operation of the dealership, if the dealer at all times meets  
17 reasonable capital standards agreed to by the dealer and the  
18 manufacturer or distributor, and if a change in capital structure  
19 does not cause a change in the principal management or have the  
20 effect of a sale of the franchise without the consent of the  
21 manufacturer or distributor.

22 (c) To prevent or require, or attempt to prevent or require, a  
23 dealer to change the executive management of a dealership, other  
24 than the principal dealership operator or operators, if the franchise  
25 was granted to the dealer in reliance upon the personal  
26 qualifications of that person.

27 (d) (1) Except as provided in subdivision (t), to prevent or  
28 require, or attempt to prevent or require, by contract or otherwise,  
29 a dealer, or an officer, partner, or stockholder of a dealership, the  
30 sale or transfer of a part of the interest of any of them to another  
31 person. A dealer, officer, partner, or stockholder shall not, however,  
32 have the right to sell, transfer, or assign the franchise, or a right  
33 thereunder, without the consent of the manufacturer or distributor  
34 except that the consent shall not be unreasonably withheld.

35 (2) (A) For the transferring franchisee to fail, prior to the sale,  
36 transfer, or assignment of a franchisee or the sale, assignment, or  
37 transfer of all, or substantially all, of the assets of the franchised  
38 business or a controlling interest in the franchised business to  
39 another person, to notify the manufacturer or distributor of the

franchisee's decision to sell, transfer, or assign the franchise. The notice shall be in writing and shall include all of the following:

- (i) The proposed transferee's name and address.
- (ii) A copy of all of the agreements relating to the sale, assignment, or transfer of the franchised business or its assets.
- (iii) The proposed transferee's application for approval to become the successor franchisee. The application shall include forms and related information generally utilized by the manufacturer or distributor in reviewing prospective franchisees, if those forms are readily made available to existing franchisees. As soon as practicable after receipt of the proposed transferee's application, the manufacturer or distributor shall notify the franchisee and the proposed transferee of information needed to make the application complete.

(B) For the manufacturer or distributor, to fail, on or before 60 days after the receipt of all of the information required pursuant to subparagraph (A), or as extended by a written agreement between the manufacturer or distributor and the franchisee, to notify the franchisee of the approval or the disapproval of the sale, transfer, or assignment of the franchise. The notice shall be in writing and shall be personally served or sent by certified mail, return receipt requested, or by guaranteed overnight delivery service that provides verification of delivery and shall be directed to the franchisee. A proposed sale, assignment, or transfer shall be deemed approved, unless disapproved by the franchisor in the manner provided by this subdivision. If the proposed sale, assignment, or transfer is disapproved, the franchisor shall include in the notice of disapproval a statement setting forth the reasons for the disapproval.

(3) In an action in which the manufacturer's or distributor's withholding of consent under this subdivision or subdivision (e) is an issue, whether the withholding of consent was unreasonable is a question of fact requiring consideration of all the existing circumstances.

(e) To prevent, or attempt to prevent, a dealer from receiving fair and reasonable compensation for the value of the franchised business. There shall not be a transfer or assignment of the dealer's franchise without the consent of the manufacturer or distributor, ~~which consent shall not be unreasonably withheld or conditioned~~ distributor. *The manufacturer or distributor shall not unreasonably*

1 *withhold consent or condition consent* upon the release, assignment,  
2 novation, waiver, estoppel, or modification of a claim or defense  
3 by the dealer.

4 (f) To obtain money, goods, services, or another benefit from  
5 a person with whom the dealer does business, on account of, or in  
6 relation to, the transaction between the dealer and that other person,  
7 other than for compensation for services rendered, unless the  
8 benefit is promptly accounted for, and transmitted to, the dealer.

9 (g) (1) Except as provided in paragraph (3), to obtain from a  
10 dealer or enforce against a dealer an agreement, provision, release,  
11 assignment, novation, waiver, or estoppel that does any of the  
12 following:

13 (A) Modifies or disclaims a duty or obligation of a manufacturer,  
14 manufacturer branch, distributor, distributor branch, or  
15 representative, or a right or privilege of a dealer, pursuant to  
16 Chapter 4 (commencing with Section 11700) of Division 5 or  
17 Chapter 6 (commencing with Section 3000) of Division 2.

18 (B) Limits or constrains the right of a dealer to file, pursue, or  
19 submit evidence in connection with a protest before the board.

20 (C) Requires a dealer to terminate a franchise.

21 (D) Requires a controversy between a manufacturer,  
22 manufacturer branch, distributor, distributor branch, or  
23 representative and a dealer to be referred to a person for a binding  
24 determination. However, this subparagraph does not prohibit  
25 arbitration before an independent arbitrator, provided that whenever  
26 a motor vehicle franchise contract provides for the use of arbitration  
27 to resolve a controversy arising out of, or relating to, that contract,  
28 arbitration may be used to settle the controversy only if, after the  
29 controversy arises, all parties to the controversy consent in writing  
30 to use arbitration to settle the controversy. For the purpose of this  
31 subparagraph, the terms “motor vehicle” and “motor vehicle  
32 franchise contract” shall have the same meaning as defined in  
33 Section 1226 of Title 15 of the United States Code. If arbitration  
34 is elected to settle a dispute under a motor vehicle franchise  
35 contract, the arbitrator shall provide the parties to the arbitration  
36 with a written explanation of the factual and legal basis for the  
37 award.

38 (2) An agreement, provision, release, assignment, novation,  
39 waiver, or estoppel prohibited by this subdivision shall be  
40 unenforceable and void.

1 (3) This subdivision does not do any of the following:

2 (A) Limit or restrict the terms upon which parties to a protest  
3 before the board, civil action, or other proceeding can settle or  
4 resolve, or stipulate to evidentiary or procedural matters during  
5 the course of, a protest, civil action, or other proceeding.

6 (B) Affect the enforceability of any stipulated order or other  
7 order entered by the board.

8 (C) Affect the enforceability of any provision in a contract if  
9 the provision is not prohibited under this subdivision or any other  
10 law.

11 (D) Affect the enforceability of a provision in any contract  
12 entered into on or before December 31, 2011.

13 (E) Prohibit a dealer from waiving its right to file a protest  
14 pursuant to Section 3065.1 if the waiver agreement is entered into  
15 after a franchisor incentive program claim has been disapproved  
16 by the franchisor and the waiver is voluntarily given as part of an  
17 agreement to settle that claim.

18 (F) Prohibit a voluntary agreement supported by valuable  
19 consideration, other than granting or renewing a franchise, that  
20 does both of the following:

21 (i) Provides that a dealer establish or maintain exclusive  
22 facilities, personnel, or display space or provides that a dealer  
23 make a material alteration, expansion, or addition to a dealership  
24 facility.

25 (ii) Contains no waiver or other provision prohibited by  
26 subparagraph (A), (B), (C), or (D) of paragraph (1).

27 (G) Prohibit an agreement separate from the franchise agreement  
28 that implements a dealer's election to terminate the franchise if  
29 the agreement is conditioned only on a specified time for  
30 termination or payment of consideration to the dealer.

31 (H) (i) Prohibit a voluntary waiver agreement, supported by  
32 valuable consideration, other than the consideration of renewing  
33 a franchise, to waive the right of a dealer to file a protest under  
34 Section 3062 for the proposed establishment or relocation of a  
35 specific proposed dealership, if the waiver agreement provides all  
36 of the following:

37 (I) The approximate address at which the proposed dealership  
38 will be located.

39 (II) The planning potential used to establish the proposed  
40 dealership's facility, personnel, and capital requirements.

1 (III) An approximation of projected vehicle and parts sales, and  
2 number of vehicles to be serviced at the proposed dealership.

3 (IV) Whether the franchisor or affiliate will hold an ownership  
4 interest in the proposed dealership or real property of the proposed  
5 dealership, and the approximate percentage of any franchisor or  
6 affiliate ownership interest in the proposed dealership.

7 (V) The line-makes to be operated at the proposed dealership.

8 (VI) If known at the time the waiver agreement is executed, the  
9 identity of the dealer who will operate the proposed dealership.

10 (VII) The date the waiver agreement is to expire, which may  
11 not be more than 30 months after the date of execution of the  
12 waiver agreement.

13 (ii) Notwithstanding the provisions of a waiver agreement  
14 entered into pursuant to the provisions of this subparagraph, a  
15 dealer may file a protest under Section 3062 if any of the  
16 information provided pursuant to clause (i) has become materially  
17 inaccurate since the waiver agreement was executed. Any  
18 determination of the enforceability of a waiver agreement shall be  
19 determined by the board and the franchisor shall have the burden  
20 of proof.

21 (h) To increase prices of motor vehicles that the dealer had  
22 ordered for private retail consumers prior to the dealer's receipt  
23 of the written official price increase notification. A sales contract  
24 signed by a private retail consumer is evidence of the order. In the  
25 event of manufacturer price reductions, the amount of the reduction  
26 received by a dealer shall be passed on to the private retail  
27 consumer by the dealer if the retail price was negotiated on the  
28 basis of the previous higher price to the dealer. Price reductions  
29 apply to all vehicles in the dealer's inventory that were subject to  
30 the price reduction. Price differences applicable to new model or  
31 series motor vehicles at the time of the introduction of new models  
32 or series shall not be considered a price increase or price decrease.  
33 This subdivision does not apply to price changes caused by either  
34 of the following:

35 (1) The addition to a motor vehicle of required or optional  
36 equipment pursuant to state or federal law.

37 (2) Revaluation of the United States dollar in the case of a  
38 foreign-make vehicle.

39 (i) To fail to pay to a dealer, within a reasonable time following  
40 receipt of a valid claim by a dealer thereof, a payment agreed to

1 be made by the manufacturer or distributor to the dealer by reason  
2 of the fact that a new vehicle of a prior year model is in the dealer's  
3 inventory at the time of introduction of new model vehicles.

4 (j) To deny the widow, widower, or heirs designated by a  
5 deceased owner of a dealership the opportunity to participate in  
6 the ownership of the dealership or successor dealership under a  
7 valid franchise for a reasonable time after the death of the owner.

8 (k) To offer refunds or other types of inducements to a person  
9 for the purchase of new motor vehicles of a certain line-make to  
10 be sold to the state or a political subdivision of the state without  
11 making the same offer to all other dealers in the same line-make  
12 within the relevant market area.

13 (l) To modify, replace, enter into, relocate, terminate, or refuse  
14 to renew a franchise in violation of Article 4 (commencing with  
15 Section 3060) of Chapter 6 of Division 2.

16 (m) To employ a person as a representative who has not been  
17 licensed pursuant to Article 3 (commencing with Section 11900)  
18 of Chapter 4 of Division 5.

19 (n) To deny a dealer the right of free association with another  
20 dealer for a lawful purpose.

21 (o) (1) To compete with a dealer in the same line-make  
22 operating under an agreement or franchise from a manufacturer  
23 or distributor in the relevant market area.

24 (2) A manufacturer, branch, or distributor or an entity that  
25 controls or is controlled by, a manufacturer, branch, or distributor,  
26 shall not, however, be deemed to be competing in the following  
27 limited circumstances:

28 (A) Owning or operating a dealership for a temporary period,  
29 not to exceed one year at the location of a former dealership of the  
30 same line-make that has been out of operation for less than six  
31 months. However, after a showing of good cause by a  
32 manufacturer, branch, or distributor that it needs additional time  
33 to operate a dealership in preparation for sale to a successor  
34 independent franchisee, the board may extend the time period.

35 (B) Owning an interest in a dealer as part of a bona fide dealer  
36 development program that satisfies all of the following  
37 requirements:

38 (i) The sole purpose of the program is to make franchises  
39 available to persons lacking capital, training, business experience,  
40 or other qualities ordinarily required of prospective franchisees

1 and the dealer development candidate is an individual who is  
2 unable to acquire the franchise without assistance of the program.

3 (ii) The dealer development candidate has made a significant  
4 investment subject to loss in the franchised business of the dealer.

5 (iii) The program requires the dealer development candidate to  
6 manage the day-to-day operations and business affairs of the dealer  
7 and to acquire, within a reasonable time and on reasonable terms  
8 and conditions, beneficial ownership and control of a majority  
9 interest in the dealer and disassociation of any direct or indirect  
10 ownership or control by the manufacturer, branch, or distributor.

11 (C) Owning a wholly owned subsidiary corporation of a  
12 distributor that sells motor vehicles at retail, if, for at least three  
13 years prior to January 1, 1973, the subsidiary corporation has been  
14 a wholly owned subsidiary of the distributor and engaged in the  
15 sale of vehicles at retail.

16 (3) (A) A manufacturer, branch, and distributor that owns or  
17 operates a dealership in the manner described in subparagraph (A)  
18 of paragraph (2) shall give written notice to the board, within 10  
19 days, each time it commences or terminates operation of a  
20 dealership and each time it acquires, changes, or divests itself of  
21 an ownership interest.

22 (B) A manufacturer, branch, and distributor that owns an interest  
23 in a dealer in the manner described in subparagraph (B) of  
24 paragraph (2) shall give written notice to the board, annually, of  
25 the name and location of each dealer in which it has an ownership  
26 interest, the name of the bona fide dealer development owner or  
27 owners, and the ownership interests of each owner expressed as a  
28 percentage.

29 (p) To unfairly discriminate among its franchisees with respect  
30 to warranty reimbursement or authority granted to its franchisees  
31 to make warranty adjustments with retail customers.

32 (q) To sell vehicles to a person not licensed pursuant to this  
33 chapter for resale.

34 (r) To fail to affix an identification number to a park trailer, as  
35 described in Section 18009.3 of the Health and Safety Code, that  
36 is manufactured on or after January 1, 1987, and that does not  
37 clearly identify the unit as a park trailer to the department. The  
38 configuration of the identification number shall be approved by  
39 the department.



1 (s) To dishonor a warranty, rebate, or other incentive offered  
2 to the public or a dealer in connection with the retail sale of a new  
3 motor vehicle, based solely upon the fact that an autobroker  
4 arranged or negotiated the sale. This subdivision shall not prohibit  
5 the disallowance of that rebate or incentive if the purchaser or  
6 dealer is ineligible to receive the rebate or incentive pursuant to  
7 any other term or condition of a rebate or incentive program.

8 (t) To exercise a right of first refusal or other right requiring a  
9 franchisee or an owner of the franchise to sell, transfer, or assign  
10 to the franchisor, or to a nominee of the franchisor, all or a material  
11 part of the franchised business or of the assets of the franchised  
12 business unless all of the following requirements are met:

13 (1) The franchise authorizes the franchisor to exercise a right  
14 of first refusal to acquire the franchised business or assets of the  
15 franchised business in the event of a proposed sale, transfer, or  
16 assignment.

17 (2) The franchisor gives written notice of its exercise of the  
18 right of first refusal no later than 45 days after the franchisor  
19 receives all of the information required pursuant to subparagraph  
20 (A) of paragraph (2) of subdivision (d).

21 (3) The sale, transfer, or assignment being proposed relates to  
22 not less than all or substantially all of the assets of the franchised  
23 business or to a controlling interest in the franchised business.

24 (4) The proposed transferee is neither a family member of an  
25 owner of the franchised business, nor a managerial employee of  
26 the franchisee owning 15 percent or more of the franchised  
27 business, nor a corporation, partnership, or other legal entity owned  
28 by the existing owners of the franchised business. For purposes of  
29 this paragraph, a “family member” means the spouse of an owner  
30 of the franchised business, the child, grandchild, brother, sister,  
31 or parent of an owner, or a spouse of one of those family members.  
32 This paragraph does not limit the rights of the franchisor to  
33 disapprove a proposed transferee as provided in subdivision (d).

34 (5) Upon the franchisor’s exercise of the right of first refusal,  
35 the consideration paid by the franchisor to the franchisee and  
36 owners of the franchised business shall equal or exceed all  
37 consideration that each of them were to have received under the  
38 terms of, or in connection with, the proposed sale, assignment, or  
39 transfer, and the franchisor shall comply with all the terms and

1 conditions of the agreement or agreements to sell, transfer, or  
2 assign the franchised business.

3 (6) The franchisor shall reimburse the proposed transferee for  
4 expenses paid or incurred by the proposed transferee in evaluating,  
5 investigating, and negotiating the proposed transfer to the extent  
6 those expenses do not exceed the usual, customary, and reasonable  
7 fees charged for similar work done in the area in which the  
8 franchised business is located. These expenses include, but are not  
9 limited to, legal and accounting expenses, and expenses incurred  
10 for title reports and environmental or other investigations of real  
11 property on which the franchisee's operations are conducted. The  
12 proposed transferee shall provide the franchisor a written  
13 itemization of those expenses, and a copy of all nonprivileged  
14 reports and studies for which expenses were incurred, if any, within  
15 30 days of the proposed transferee's receipt of a written request  
16 from the franchisor for that accounting. The franchisor shall make  
17 payment within 30 days of exercising the right of first refusal.

18 (u) (1) To unfairly discriminate in favor of a dealership owned  
19 or controlled, in whole or in part, by a manufacturer or distributor  
20 or an entity that controls or is controlled by the manufacturer or  
21 distributor. Unfair discrimination includes, but is not limited to,  
22 the following:

23 (A) The furnishing to a franchisee or dealer that is owned or  
24 controlled, in whole or in part, by a manufacturer, branch, or  
25 distributor of any of the following:

26 (i) A vehicle that is not made available to each franchisee  
27 pursuant to a reasonable allocation formula that is applied  
28 uniformly, and a part or accessory that is not made available to all  
29 franchisees on an equal basis when there is no reasonable allocation  
30 formula that is applied uniformly.

31 (ii) A vehicle, part, or accessory that is not made available to  
32 each franchisee on comparable delivery terms, including the time  
33 of delivery after the placement of an order. Differences in delivery  
34 terms due to geographic distances or other factors beyond the  
35 control of the manufacturer, branch, or distributor shall not  
36 constitute unfair competition.

37 (iii) Information obtained from a franchisee by the manufacturer,  
38 branch, or distributor concerning the business affairs or operations  
39 of a franchisee in which the manufacturer, branch, or distributor  
40 does not have an ownership interest. The information includes,

but is not limited to, information contained in financial statements and operating reports, the name, address, or other personal information or buying, leasing, or service behavior of a dealer customer, and other information that, if provided to a franchisee or dealer owned or controlled by a manufacturer or distributor, would give that franchisee or dealer a competitive advantage. This clause does not apply if the information is provided pursuant to a subpoena or court order, or to aggregated information made available to all franchisees.

(iv) Sales or service incentives, discounts, or promotional programs that are not made available to all California franchises of the same line-make on an equal basis.

(B) Referring a prospective purchaser or lessee to a dealer in which a manufacturer, branch, or distributor has an ownership interest, unless the prospective purchaser or lessee resides in the area of responsibility assigned to that dealer or the prospective purchaser or lessee requests to be referred to that dealer. *For purposes of this subparagraph, the term "area of responsibility" means a geographic area specified in a franchise that is used by the franchisor for the purpose of evaluating the franchisee's performance of its sales and service obligations.*

(2) This subdivision does not prohibit a franchisor from granting a franchise to prospective franchisees or assisting those franchisees during the course of the franchise relationship as part of a program or programs to make franchises available to persons lacking capital, training, business experience, or other qualifications ordinarily required of prospective franchisees.

(v) (1) To access, modify, or extract information from a confidential dealer computer record, as defined in Section 11713.25, without obtaining the prior written consent of the dealer and without maintaining administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of the information.

(2) Paragraph (1) does not limit a duty that a dealer may have to safeguard the security and privacy of records maintained by the dealer.

(w) (1) To use electronic, contractual, or other means to prevent or interfere with any of the following:

(A) The lawful efforts of a dealer to comply with federal and state data security and privacy laws.

1 (B) The ability of a dealer to do either of the following:

2 (i) Ensure that specific data accessed from the dealer's computer  
3 system is within the scope of consent specified in subdivision (v).

4 (ii) Monitor specific data accessed from or written to the dealer's  
5 computer system.

6 (2) Paragraph (1) does not limit a duty that a dealer may have  
7 to safeguard the security and privacy of records maintained by the  
8 dealer.

9 (x) (1) To unfairly discriminate against a franchisee selling a  
10 service contract, debt cancellation agreement, maintenance  
11 agreement, or similar product not approved, endorsed, sponsored,  
12 or offered by the manufacturer, manufacturer branch, distributor,  
13 or distributor branch or affiliate. For purposes of this subdivision,  
14 unfair discrimination includes, but is not limited to, any of the  
15 following:

16 (A) Express or implied statements that the dealer is under an  
17 obligation to exclusively sell or offer to sell service contracts, debt  
18 cancellation agreements, or similar products approved, endorsed,  
19 sponsored, or offered by the manufacturer, manufacturer branch,  
20 distributor, or distributor branch or affiliate.

21 (B) Express or implied statements that selling or offering to sell  
22 service contracts, debt cancellation agreements, maintenance  
23 agreements, or similar products not approved, endorsed, sponsored,  
24 or offered by the manufacturer, manufacturer branch, distributor,  
25 or distributor branch or affiliate, or the failure to sell or offer to  
26 sell service contracts, debt cancellation agreements, maintenance  
27 agreements, or similar products approved, endorsed, sponsored,  
28 or offered by the manufacturer, manufacturer branch, distributor,  
29 or distributor branch or affiliate will have any negative  
30 consequences for the dealer.

31 (C) Measuring a dealer's performance under a franchise  
32 agreement based upon the sale of service contracts, debt  
33 cancellation agreements, or similar products approved, endorsed,  
34 sponsored, or offered by the manufacturer, manufacturer branch,  
35 distributor, or distributor branch or affiliate.

36 (D) Requiring a dealer to actively promote the sale of service  
37 contracts, debt cancellation agreements, or similar products  
38 approved, endorsed, sponsored, or offered by the manufacturer,  
39 manufacturer branch, distributor, or distributor branch or affiliate.

1 (E) Conditioning access to vehicles or parts, or vehicle sales or  
2 service incentives upon the sale of service contracts, debt  
3 cancellation agreements, or similar products approved, endorsed,  
4 sponsored, or offered by the manufacturer, manufacturer branch,  
5 distributor, or distributor branch or affiliate.

6 (2) Unfair discrimination does not include, and nothing shall  
7 prohibit a manufacturer from, offering an incentive program to  
8 vehicle dealers who voluntarily sell or offer to sell service  
9 contracts, debt cancellation agreements, or similar products  
10 approved, endorsed, sponsored, or offered by the manufacturer,  
11 manufacturer branch, distributor, or distributor branch or affiliate,  
12 if the program does not provide vehicle sales or service incentives.

13 (3) This subdivision does not prohibit a manufacturer,  
14 manufacturer branch, distributor, or distributor branch from  
15 requiring a franchisee that sells a used vehicle as “certified” under  
16 a certified used vehicle program established by the manufacturer,  
17 manufacturer branch, distributor, or distributor branch to provide  
18 a service contract approved, endorsed, sponsored, or offered by  
19 the manufacturer, manufacturer branch, distributor, or distributor  
20 branch.

21 (4) Unfair discrimination does not include, and nothing shall  
22 prohibit a franchisor from requiring a franchisee to provide, the  
23 following notice prior to the sale of the service contract if the  
24 service contract is not provided or backed by the franchisor and  
25 the vehicle is of the franchised line-make:

26  
27 “Service Contract Disclosure

28 The service contract you are purchasing is not provided or backed  
29 by the manufacturer of the vehicle you are purchasing. The  
30 manufacturer of the vehicle is not responsible for claims or repairs  
31 under this service contract.

32  
33 \_\_\_\_\_  
34 Signature of Purchaser”

35 (y) To take or threaten to take any adverse action against a dealer  
36 pursuant to an export or sale-for-resale prohibition because the  
37 dealer sold or leased a vehicle to a customer who either exported  
38 the vehicle to a foreign country or resold the vehicle in violation  
39 of the prohibition, unless the export or sale-for-resale prohibition  
40 policy was provided to the dealer in writing prior to the sale or

1 lease, and the dealer knew or reasonably should have known of  
2 the customer's intent to export or resell the vehicle in violation of  
3 the prohibition at the time of sale or lease. If the dealer causes the  
4 vehicle to be registered in this or any other state, and collects or  
5 causes to be collected any applicable sales or use tax due to this  
6 state, a rebuttable presumption is established that the dealer did  
7 not have reason to know of the customer's intent to export or resell  
8 the vehicle.

9 ~~(z) As used in this section, "area of responsibility" is a~~  
10 ~~geographic area specified in a franchise that is used by the~~  
11 ~~franchisor for the purpose of evaluating the franchisee's~~  
12 ~~performance of its sales and service obligations.~~